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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PAUL HENRY CORDWELL,
71 Collingbourne Kingston
Malborough, SN8 3SD,
United Kingdom

Plaintiff,

v.

KENJIRO LUCAS a/k/a RED MCFLY,
3028 North Ruch Street
Whitehall, PA 18052

Defendant.

CASE NO.: _____

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff, Paul Henry Cordwell ("Plaintiff"), by his undersigned attorneys, Duane Morris LLP, for his Complaint alleges as follows:

SUBSTANCE OF THE ACTION

1. This is a case of willful copyright infringement in violation of 17 U.S.C. §§ 106(1) and 501. Plaintiff seeks compensatory damages in an amount to be established at trial.

PARTIES

2. Plaintiff Paul Henry Cordwell is an individual doing business as Paul Cordwell Photography Limited and has a mailing address at 71 Collingbourne Kingston, Marlborough, SN8 3SD, United Kingdom.

3. Upon information and belief, defendant Kenjiro Lucas is an individual musical artist who uses the performance name “Red McFly” and does related business promoting his music and related interests by and through the entity Take Flight Society Wear LLC (“Defendant”). On information and belief, Defendant resides and has a principal place of business at 3028 North Ruch Street, Whitehall, Pennsylvania, 18052.

JURISDICTION AND VENUE

4. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, and therefore this Court has jurisdiction under 17 U.S.C. § 101 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1338(a) (jurisdiction over copyright actions).

5. Personal jurisdiction over Defendant is proper. Defendant is conducting business and has committed a tort in this District, causing Plaintiff to suffer harm in this State and District.

6. Pursuant to 28 U.S.C. § 1391, venue properly lies in this Court because a substantial part of the events giving rise to the claims asserted occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Plaintiff’s Business

7. Plaintiff is a professional photographer who creates and licenses photographic images for various uses.

8. Plaintiff provides creative and made-to-order imagery for the aviation markets, specializing in industrial & advertising business aviation photography. Among the many highly stylized and unique photographs created by Plaintiff, Plaintiff

1 is the original author of a popular photographic image of a jet plane, entitled
2 “Cordwell (CA_5520_MG_0340-1Big),” the photographic work that is at issue in this
3 infringement action (the “Copyrighted Work”).

4 9. Attached hereto as **Exhibit A** is a copy of the original photographic
5 image that is the Copyrighted Work.

6 10. Plaintiff has obtained the following registration with the United States
7 Copyright Office for Cordwell (CA_5520_MG_0340-1Big) (“Cordwell”): VA 1-968-
8 855. Attached hereto as **Exhibit B** is a copy of the registration VA 1-968-855 as
9 issued by the United States Copyright Office.

10 11. Plaintiff is the exclusive owner of all rights, title, and interest, including
11 copyrights, in and to the Copyrighted Work.

12 B. Defendant’s Unlawful Activities

13 12. On information and belief, Defendant is a resident of Pennsylvania who
14 creates music and performs as a musical artist under the name “Red McFly.” Upon
15 information and belief, Defendant also designs and sells clothing in connection with
16 and promotion of his music by and through his company, Take Flight Society Wear
17 LLC.

18 13. Upon information and belief, on March 3, 2015, Defendant released an
19 album entitled “Take Flight Society Clothing Presents: The Good Fly Young, Hosted
20 by Red McFly” (the “Album”).

21 14. The Album’s cover contains an infringing reproduction and display of the
22 Copyrighted Work.

23 15. During the period relevant to this infringement action, Defendant has
24 promoted and advertised himself, his music and merchandise at least at the websites
25 located at the URLs:

- 26 • <http://www.redmcfly.com/>;
- 27 • <http://www.takeflightsociety.com/>;
- 28

- <http://www.thisisred.net/>;
- http://www.ceeeworld.com;
- http://www.audiomack.com;
- http://www.getrightmusic.com;
- http://www.itsbizkit.com;
- http://redmcfly.tumblr.com;
- <https://www.linkedin.com/pub/red-mcfly/26/674/4a8>;
- and
- <https://www.facebook.com/Redmcfly>.

16. Plaintiff has discovered numerous instances in which Defendant has infringed Plaintiff's exclusive copyright in the Copyrighted Work by reproducing, distributing, and/or publicly displaying the Copyrighted Work to promote Defendant's Album and his merchandise at websites located at the following URLs:

- <http://assets.audiomack.com/red-mcfly/b7d542e4f1bbe5128ea0c24108b83642-275-275.jpeg>;
- <http://assets.audiomack.com/red-mcfly/57c38167745f6f6cfe0337b204a5118a.jpeg>;
- http://41.media.tumblr.com/04fc213b57c8311331b310f603d00ade/tumblr_nko2vh0Fss1qd3yzmo1_1280.jpg;
- <http://www.getrightmusic.com/images/covers/8fe2206df9523c53e3eae3cc0d69f655-260-260.jpeg>;
- <http://www.ceeeworld.com/2015/03/mixtape-take-flight-society-presents.html>;
- <http://www.audiomack.com/album/red-mcfly/takeflight-society-presents-the-good-fly-young-hosted-by-red-mcfly>;
- <http://www.audiomack.com/song/red-mcfly/only-time-free-instrumental>;
- <http://hiphopinstrumentals365.tumblr.com/post/113267606836/take-flight-society-clothing-presents-the-good>;
- <http://www.audioback.xyz/album/red-mcfly/takeflight-society-presents-the-good-fly-young-hosted-by-red-mcfly>;

- 1 • <http://www.redmcfly.com/>;
- 2 • <http://redmcfly.tumblr.com/post/112659938015/takeflight-society-presents-the-good-fly-young>;
- 3 • <http://itsbizkit.com/2015/03/04/music-flight-society-clothing-presents-the-good-fly-young-hosted-red-mcfly-mixtape/>;
- 4 • <http://www.audiomack.com/song/red-mcfly/red-mcfly-trillmatic>;
- 5 • <http://hiphopsince1987.com/2015/music/take-flight-society-clothing-presents-the-good-fly-young-hosted-by-red-mcfly-mixtape/>;
- 6 • <http://www.getrightmusic.com/mixtape/post/various-artists287>;
- 7 • <http://itsbizkit.com/wp-content/uploads/2015/03/unnamed3.jpg>; and
- 8 • http://cdn3.hiphopsince1987.com/wp-content/uploads/2015/03/Take_Flight_Society_Clothing-435x375.jpg.

11 17. Defendant's reproduction, distribution, and public display of the
 12 Copyrighted Work is without Plaintiff's permission. Copies of screenshots
 13 demonstrating Defendant's unauthorized use ("Infringing Works") are attached hereto
 14 as **Exhibit C**.

15 18. Through counsel, Plaintiff served written notice on Defendant of his
 16 infringement of Plaintiff's exclusive rights, demanding that Defendant cease and desist
 17 such infringement and compensate Plaintiff for the otherwise unauthorized
 18 appropriation of his Copyrighted Work.

19 19. Defendant has failed and refused to respond to the written demands
 20 served by Plaintiff's counsel.

21 20. Despite Plaintiff's written demand, Defendant has failed to terminate all
 22 infringing uses, displays and distributions of Infringing Works, and he continues to
 23 display and distribute Plaintiff's Copyrighted Work along with the Album, as well as
 24 promote his Album by displaying the Copyrighted Work, contrary to Plaintiff's
 25 express demand.

26 21. Defendant has failed and refused to compensate Plaintiff for the
 27 unauthorized reproduction, distribution and display of the Copyrighted Work.
 28

1 22. Defendant has profited from its display, distribution and use of the
2 Infringing Works.

3 23. Defendant's refusal to respond to the written notice and demand served
4 by Plaintiff's counsel and his refusal to offer any compensation for his unauthorized
5 uses of the Copyrighted Work for his own commercial benefit indicates that
6 Defendant's infringements of Plaintiff's exclusive rights in the Copyrighted Work has
7 been and continues to be intentional.

8 **CLAIM FOR RELIEF**

9 **DIRECT COPYRIGHT INFRINGEMENT**

10 **(17 U.S.C. § 101 *et seq.*)**

11 24. Plaintiff realleges paragraphs 1 through 23 above and incorporates them
12 by reference as if fully set forth herein.

13 25. The Copyrighted Work is an original work of authorship, embodying
14 copyrightable subject matter, subject to the full protection of the United States
15 copyright laws. Plaintiff exclusively owns all rights, title and interest in and to the
16 copyrights in the Copyrighted Work.

17 26. Upon information and belief, as a result of Plaintiff's publication of the
18 Copyrighted Work, Defendant had access to the Copyrighted Work prior to the
19 creation of the Infringing Works.

20 27. By its actions, as alleged above, Defendant has infringed and violated
21 Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501 *et seq.*,
22 by reproducing the Copyrighted Work, and by distributing and publicly displaying the
23 Infringing Works, all without permission or authorization.

24 28. Defendant's infringement of Plaintiff's copyrights has been and
25 continues to be willful and deliberate and Defendant has intentionally profited at the
26 expense of the Plaintiff by means of his infringements.

27 29. As a direct and proximate result of Defendant's infringement of
28 Plaintiff's exclusive rights in the Copyrighted Work, Plaintiff is entitled to his actual

1 damages, pursuant to 17 U.S.C. § 504(b), in an amount to be determined at trial, plus
2 disgorgement of Defendant's profits resulting from his unauthorized reproduction and
3 use of the Copyrighted Work and the distributions and public displays of his Infringing
4 Works.

5 30. Alternatively, and as a matter of Plaintiff's choice, Plaintiff is entitled to
6 recover statutory damages, in an amount to be established at trial, up to a maximum of
7 \$150,000 based on Defendant's willful infringement pursuant to 17 U.S.C. § 504(c)(2),
8 or up to a maximum of \$30,000 pursuant to 17 U.S.C. § 504(c)(1).

9 31. Plaintiff is entitled to recover his costs and attorneys' fees as prevailing
10 party in this lawsuit, pursuant to 17 U.S.C. § 505.

11 32. Defendant's conduct has caused and any continued infringing conduct
12 will continue to cause irreparable injury to Plaintiff, unless enjoined by this Court.
13 Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is
14 entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive
15 rights under copyright law.

16 **DEMAND FOR RELIEF**

17 WHEREFORE, Plaintiff demands judgment in his favor as follows:

18 1. A declaration that Defendant has infringed Plaintiff's copyright under the
19 Copyright Act;

20 2. A declaration that such infringement is willful;

21 3. An award of Plaintiff's actual damages, including his lost license fees
22 and related losses, in amounts to be determined at trial, pursuant to 17 U.S.C. § 504(b);

23 4. Disgorgement of Defendant's profits attributable to Defendant's
24 infringement of Plaintiff's copyrights, pursuant to 17 U.S.C. § 504(b);

25 5. An award of interest, including pre-judgment interest, on the foregoing
26 sums;

27 6. A permanent injunction enjoining Defendant, its employees, agents,
28 officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all

1 those in active concert and participation with Defendant, from directly or indirectly
2 infringing Plaintiff's copyrights or continuing to copy, distribute, dispose of, license,
3 lease, transfer, publicly display, advertise, reproduce, develop or manufacture any
4 works derived or copied from the Plaintiffs' Copyrighted Work or to participate or
5 assist in any such activity; and


6 7. For such other and further relief as the Court may deem just and proper.

7
8 **JURY DEMAND**

9 Plaintiff hereby demands a trial by jury pursuant to Fed. R. Civ. P. 38.

10
11 Dated: July 22, 2016

DUANE MORRIS LLP

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